

**Gallatin County Zoning Regulation for
Operations that Mine Sand and Gravel
Or Operations that Mix Concrete or Batch Asphalt**

Adopted:
Gallatin County Resolution No.

8/25/09

RP

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Ex. A: Map of Gallatin County Zoning District for Operations that Mine Sand and Gravel or Operations that Mix Concrete or Batch Asphalt

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WE Feel it would be in
industries best interest to see
A final COPY & ~~send~~ send it to
our legal people for their views.
RP

Section 1. Title, Creation and Adoption

This Regulation shall be known as the "Gallatin County Zoning Regulation for Operations that Mine Sand and Gravel Or Operations that Mix Concrete or Batch Asphalt" (hereinafter referred to as the "Regulation").

- 1.1 This Regulation is adopted to regulate sand and gravel mining operations and concrete or batch asphalt mixing operations for one year from the date of adoption in the area shown on the Zoning District Map, while the county conducts additional studies. 2
- 1.2 This Regulation is adopted pursuant to §76-2-206, MCA, which permits the adoption of a zoning map or regulation.
- 1.3 A copy of this Regulation, Zoning Map and Description shall be kept on file for public inspection at the office of the Gallatin County Clerk and Recorder.

Section 2. Interpretation

Wherever the requirements of this Regulation are at variance with the requirements of any lawfully adopted rules or regulations, or wherever there is an internal conflict within this Regulation, the most restrictive requirement, or that which imposes the higher standard, shall govern.

Section 3. Purposes and Intent

3.1 The general purposes and intent of this Regulation are to:

- a. promote the public health, safety, morals, and general welfare pursuant to §76-2-206, MCA;
- b. implement the goals and policies set forth in the Belgrade Area Growth Policy, as adopted by the Commission on February 6, 2007, the Gallatin County Growth Policy, as adopted by the Commission on April 15, 2003 and the Four corners Neighborhood Plan, adopted by the Commission on April 11, 2006; 2
- c. promote responsible recovery and processing of sand and gravel or other resources into concrete or asphalt by imposing reasonable conditions on sand and gravel operations and concrete or batch asphalt mixing operations within the boundaries of the District including new mines or the expansion of existing mines; and

*Charged
Already*

*WE ARE IN CHARGE TO THE ZONING TRYING
TO ZONE OUTSIDE OF THE DISTRICTS*

- d. require sand and gravel operations and concrete or batch asphalt mixing operations to provide adequate mitigation for significant adverse impacts to environmental and community resources caused by such operations.

3.2 Specific purposes of this Regulation are to:

- a. regulate sand and gravel mining operations and concrete or batch asphalt mixing operations and activities resulting from such operations, including the offsite hauling of raw or processed materials;

- b. protect and perpetuate of taxable property value of the regulated property and adjacent and neighboring properties;

- c. provide for compatible uses on adjacent or neighboring properties;

- d. mitigate significant adverse impacts to state and county transportation facilities and systems resulting from activities regulated under this Regulation in order to provide for the continued safe operation of those facilities and systems for the citizens of Gallatin County;

- e. minimize health and safety risks to adjacent or neighboring properties and all citizens of Gallatin County resulting from activities regulated under this Regulation;

- f. protect surface and groundwater quality;

- g. prevent the degradation of soil, water, air and plant life from potential and non-point pollution sources;

- h. prevent erosion resulting form activities regulated under this Regulation;

- i. prevent the unreasonable depletion and degradation of natural resources including air quality, water quality, wildlife habitat, among others; and

- j. protect the public from bearing the burden of impacts to public services and facilities by requiring activities regulated under this Regulation to contribute their appropriate share of the cots of impacts resulting from those activities.

↓ we also pay taxes & Equipment Tax on all our Equipment in the pit & trucks hauling away from site.

Section 4. Definitions

4.1 **Active mining:** Any permitted activity that has commenced upon the issuance of the appropriate permit.

4.2 **Affected land:** Means the area of land and land covered by water that is disturbed by opencut operations, including the area from which overburden or materials are to be or have been removed and upon which the overburden is to be or has been deposited, existing private roads that are used and roads constructed to gain access to the materials, areas of processing facilities on or contiguous to the opencut mine, treatment and sedimentation ponds, soil and materials stockpile areas on or contiguous to the opencut mine, and any other surface or subsurface disturbance associated with opencut operations. For the purposes of this definition, an existing private road may be included as affected land only with the landowner's consent

4.3 **Adjacency of operations:** An opencut operation is *adjacent* when the parent tract of land that encompasses the permitted area is; (a) contiguous with, shares a common border or corner with any other parent tract with another permitted opencut operation; (b) or the permitted area boundary is within 1,000 feet of another permitted opencut boundary. If a roadway bisects two or more Opencut Operations tracts of land, whether by a private road easement, County, State or Federal right-of-way, adjacency applies.

4.4 **Commission:** The Gallatin County Board of County Commissioners.

4.5 **Conditional Use:** A use which may be commenced only upon approval of a Conditional Use Permit and compliance with all applicable requirements and conditions.

4.6 **Cumulative Impacts:** Means the collective impacts on the human environment of the proposed action when considered in conjunction with other past, present, and future actions related to the proposed action by location or generic type (§75-1-220(3), MCA).

4.7 **Development Plan:** A comprehensive, plan of operation, reclamation, phasing, and future development plan with physical and temporal components. The Development Plan includes the DEQ Operation Plan, Gallatin County Site Plan and more detailed phasing plan with a clearly delineated and defined future development plan. The intent is an operator discloses to the county/public their entire plan of mining (including operation time tables) reclamation (including timetables) and future use, not only for the permitted area but the entire site.

Hand to try and tell
land owners what to do
on their property

MEPA IS
BAD AND A
big ~~problem~~
for any Natural
Resources business

4.8 **Environmental Assessment (EA):** ~~MEPA defines an EA as, "The appropriate level of environmental review for actions either that do not significantly affect the human environment, or for which the agency is uncertain whether an environmental impact statement (EIS) is required."~~ Additionally, an EA is a study of land to determine any unique environmental attributes, considering everything from endangered species to existing hazardous waste to historical significance. Depending on the findings of an EA, an Environmental Impact Statement (EIS) may or may not be needed.

4.9 **Environmental Impact Statement (EIS):** MEPA defines an EIS as a, "A comprehensive evaluation of the impacts to the human environment that likely would result from an agency action or reasonable alternatives to that action. An EIS also serves as a public disclosure of agency decision-making. Typically, an EIS is prepared in two steps. The draft EIS is a preliminary, detailed written statement that facilitates public review and comment. The final EIS is a completed, written statement that includes a summary of major conclusions and supporting information from the draft EIS, responses to substantive comments received on the draft EIS, a list of all comments on the draft EIS and any revisions made to the draft EIS, and an explanation of the agency's reasons for its decision."

4.10 **Extension** – Any request by an operator or its agents to extend an operation, or any portion thereof, beyond the term described in the Land Use or Conditional Use Permit.

4.11 **Good Neighbor Compliance: (GNC)** The degree in which an operator complies with all applicable **conditions of the CUP approval**, DEQ Opencut Permit, and responds appropriately to neighbor concerns.

4.12 **Good Neighbor Provisions:** A list of proposed conditions based on the "Good Neighbor Policy" for gravel operations prepared by the Gallatin County Planning Department and adopted by the Montana Contractors Association to provide market based balanced solutions to local resident concerns most often expressed. **A full list of the Good Neighbor Provisions has been included as Appendix B of this document.**

4.13 **Geographic Area with multiple operations (GAMO):** Any geographic area with two or more operational gravel pits less than one half mile between where **any portion of the CUP boundaries**; or where any portion of the permitted area boundaries of three or more operational gravel pits are within one half mile radius area. Additional

mitigation may be required to address to cumulative effects of fugitive dust haul routes (transportation), water quality, etc.

4.14 Industry:

- a. **Light Industry** – A use engaged in the manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales and distribution of such products, but excluding basic industrial processing. Light industry is also characterized in terms of low intensity and impact, with performance standards such as noise, air pollution, emissions, odors, vibration, dust, dirt, glare, heat, fire hazards, wastes, traffic impacts, and visual impacts of a use.
- b. **Heavy Industry** – A use engaged in the basic processing and manufacturing of materials or products predominantly from extracted or raw materials, or a use engaged in storage of, or manufacturing processes using flammable or explosive material, or storage or manufacturing processes that potentially involve hazardous or commonly recognized offensive conditions, including animal feeding operations. Heavy industry is also defined in terms of intensity and impact. Performance and bulk standards would be less restrictive than for light industry.

4.15 MDEQ: Montana Department of Environmental Quality.

4.16 Operator – means a person or entity engaged in or controlling an opencut operation..

4.17 OPA – Opencut Permit Application

4.18 Opencut Operation (AKA Gravel Mine) – means and includes the following activities, if they are conducted for the primary purpose of sale or utilization of materials, (a) removing the overburden and mining directly from the exposed natural deposits or mining directly from natural deposits of materials; (b) mine site preparation, including access; (c) processing of materials within the area that is to be mined or contiguous to the area that is to be mined or the access road; (d) transportation of materials on areas referred to the aforementioned; (e) storing or stockpiling of materials on areas referred to in (a) through (c); (g) reclamation of affected land; and any other associated surface or subsurface activity conducted on areas referred to in (a) through(c).

- 4.19 **Operation Plan** – means a plan that meets the requirements of §82-4-434; and contains a description of current land use, topographical data, hydrologic data, soils data, proposed mine areas, proposed mining and processing operations, proposed reclamation, and appropriate maps.
- 4.20 **Operations:** A facility, business, function or area and related activities where 1) sand, gravel and rock fragment are mined or excavated and/or processed using any available technology in an amount greater than 10,000 cubic yards of the aggregate for off-site distribution, sale or use; or 2) raw materials are processed into concrete products using any available technology for off-site distribution, sale, or use; or raw materials are processed into asphalt products using any available technology for off-site distribution, sale or use. Operations include a new Operation or expansion of existing Operations as regulated by the Montana Opencut Mining Act.
- 4.21 **Permitted area** – means the delineated geographic area of land and land covered by water that is disturbed by opencut operations, including the area from which overburden or materials are to be or have been removed and upon which the overburden is to be or has been deposited, existing private roads that are used and roads constructed to gain access to the materials, areas of processing facilities on or contiguous to the opencut mine, treatment and sedimentation ponds, soil and materials stockpile areas on or contiguous to the opencut mine, and any other surface or subsurface disturbance associated with opencut operations.
- 4.22 **Planning Department:** The agent of the Gallatin County Commission that administers this Regulation, either the Belgrade City-County Planning Department or the Gallatin County Planning Department depending on the location of proposed sand and gravel mining operations and concrete or batch asphalt mixing operations.
- 4.23 **Processing** – means any combination or individual activity including crushers, screens, ~~and~~ pug mills, asphalt, wash, and concrete plants; and other equipment used in processing opencut materials.
- 4.24 **Reclamation** - means the reconditioning of affected land to make the area suitable for productive use, including but not limited to forestry, agriculture, grazing, wildlife, recreation, or residential or industrial development.
- 4.25 **Storage** – The storage of aggregate material in any form (piles, rows) for more than 30 consecutive days within the permitted area.

4.26 **Site Plan** – means a scale drawing showing the accurate location of all structures, processing facilities, haul route(s), parking areas, spill containment areas, scales, and other descriptive components of the operation.

4.27 **Site Preparation** – Defined as the removal and stockpiling of soil and overburden material. Installation of haul road(s), any required berming pursuant to the operation MDEQ Opencut Permit.

4.28 **Zoning Enforcement Agent (ZEA):** Agents appointed by the Gallatin County Board of County Commissioners to supervise and enforce the provisions of this Regulation, including the Gallatin County Planning Director, Belgrade City-County Planning Department director, code Compliance Specialist, and/or delegated staff.

Section 5. Boundaries of Regulation

The District includes private and public property located in Gallatin County, Montana, as described in the Description and as shown on the Zoning District Map, which are attached hereto and made a part hereof, respectively as **Attachments A and B**.

Section 6. Conditional Use Permits

6.1 Conditional Use. A Conditional Use Permit (CUP) shall be obtained prior to commencing work onsite for all new Operations or the expansion of existing operations following the CUP procedure described below. Granting of a CUP is contingent upon fulfillment of conditions imposed by the Commission pursuant to Section 6.3 and the requirements of Section 6.4.

- b. The Operations conform to the objectives of the applicable growth policy having jurisdiction of the proposed Operations site (Gallatin County Growth Policy or the Belgrade Growth Policy, and the Four Corners Community Plan) and the purposes and intent of the Regulation;
- c. The Operations will not have significant adverse impacts on nearby properties, property values, nearby land uses, or nearby residents;
- d. The Operations will not have significant adverse impacts on groundwater, streams or wetlands or, if significant impacts are identified, the Applicant shall enter into a written agreement with

Who is this person and what are the qualifications?

Gallatin County providing for mitigation, including the provisions of financial security, for the identified impacts;

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All they say is
who gets the
approach permit
& we have no
voice.

e. The Operations will not have significant adverse impacts on public roads, services, and facilities or, if significant adverse impacts are identified, through conducting of a Traffic Impact Study (TIS), the Applicant shall enter into a written agreement with Gallatin County providing for mitigation, including the provision of financial security, for the identified impacts;

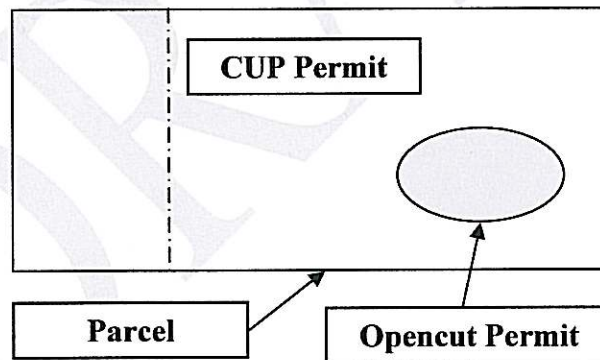
f. The Operations meet all other applicable federal, state or local regulations, including the Requirements of Section 6.4 below; and

g. A public hearing, after notice has been given, has been held.

6.2 Planned Gravel Mining.. An applicant may apply for a CUP that encompasses an area greater than what is or has been requested to be permitted by the DEQ Opencut permit.

Example:

DEQ Permit Area:	20-acres
CUP Permit Area:	120-acres
Parcel Area:	160-acres



Intent / Objective

The intent is to allow an applicant to secure future mining expansion/extension under current regulation and to inform future land owners of possible expansion/extension. Signage shall be required on the CUP boundary if the area is greater than the DEQ permit area, to inform future land owners that operations may be adjacent to their property. When an applicant chooses this option signage on the parcel shall be required for the length of the CUP, including applicants' phone number, and address on weather resistant material.

CUP's shall be issued by the commission only upon the finding:

6.3 **Permits, Terms of Issuance.** A CUP may be issued for a revocable, temporary, permanent or long term period. All CUP's issued for a definite term shall expire at the end of the term. Extensions may be obtained by following all procedures and payment of fees required for the original permitting.

6.4 **Permits, Conditions.** The Commission may make the granting of a CUP subject to reasonable limitations of conditions as it may deem necessary to protect the public health, safety, morals, and general welfare, to reduce significant adverse impacts on nearby property or residences, to preserve the character of the area, to mitigate significant adverse impacts, and to give effect to the purposes and intent of this Regulation. The conditions may include by are not limited to the following:

- a. Vehicular ingress and egress.
- b. Right-of-way.
- c. Lighting.
- d. Term of the Operation.
- e. Signs.
- f. Noise.
- g. Dust and other air quality parameters.
- h. Vibrations.
- i. Erosion.
- j. Protection of water quality and quantity.
- k. Regulation for the time of activities, which may include a provision for operation beyond the required hours of operation under special circumstances.
- l. Landscaping and maintenance thereof.
- m. Placement of uses on the property.
- n. Method of water disposal.
- o. Nature and extent of use.
- p. Noxious weeds.
- q. Public safety measures, including fire protection.
- r. Submission of periodic monitoring reports.

6.5 **Permits, Requirements.** The following requirements apply to all new Operations or the expansion of existing Operations:

- a. Prior to commencing work under the CUP onsite, the applicant must:

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- i. comply with all pre-operating conditions of approval as stated in the Findings of Fact and Order for the CUP, including, if required, entering into a written agreement with Gallatin County to provide financial guarantees in a form and amount acceptable to Gallatin County;
 - ii. obtain a Land Use Permit (LUP). The LUP will only be issued by the Planning Department upon a determination by the Planning Department that the applicant has complied with all pre-operating conditions of approval in the CUP;
 - iii. obtain all necessary state and federal permits for the Operations including but not limited to all permits listed in Section 5.E.40 of the Gallatin County Subdivision Regulations; permits required pursuant to federal and state water and air protection acts and, if required, a beneficial water use permit from the Montana Department of Natural Resources and Conservation;
- b. For the term of approval, conditions imposed pursuant to this Regulation shall constitute restrictions running with the land, shall apply and be adhered to by the owner of the land, its agents, successors or assigns, shall be binding upon the owner of the land, its agents, successors or assigns, shall be consented to in writing and shall be recorded as such with the Gallatin County Clerk and Recorder's Office by the property owner prior to the issuance of any building permits, final sale plan approval, LUP, or commencement of the conditional use.
- c. Operations shall have a Plan of Operations and Reclamation Plan approved by MDEQ, and shall comply with those plans during the term of Operations.
- d. All CUP applications shall be accompanied by the applicable fees, established by the Commission pursuant to the Resolution adopting these Regulations. No CUP shall be issued nor shall any action be taken on proceedings before the Commission until such fees have been paid.

6.6 Conditional Use Permit Procedure.

- a. Applicants shall complete and submit 24 printed copies of the Regulation CUP application form and required information, and electronic copy of compact disc, and all applicable fees to the Planning Department.

- b. Prior to submitting an application, applicants shall participate in a pre-application meeting with the Planning Department to discuss the application and to identify any information not identified by the CUP application. The pre-application meeting shall occur no sooner than 60 working days prior to submittal of the application.
- c. The Planning Department shall then review the application and conduct such investigation as necessary to ensure sufficient information is submitted to allow a decision on the application consistent with the intent and purpose of these Regulations.
- d. Notice of the public hearing for CUP's shall be published in a newspaper of general circulation within the County via a legal advertisement and a display advertisement including a vicinity map of minimum size 3 inches by 5 inches no less than twice between 7 and 15 days prior to the hearing. Adjacent property owners of the property within 1000 feet of the parcel boundaries shall be notified by certified mail with all cost paid by the applicant. Applicant shall also provide postage for the courtesy first-class mail property owners between 1000 feet and ½ mile. Applicant shall post notice of the public hearing in a conspicuous manner at two prominent locations on-site or within close proximity to a public road, with their name and phone number clearly displayed on a minimum 8 ½ x 11" brightly colored weather resistant material.
- e. Upon completion of the investigation, the Commission shall hold a public hearing to accept public comment on the CUP application. The Commission may continue the hearing, if need be, to gather additional information. Thereafter, the Commission shall render a decision based on Section 6.1, above.
- f. If possible, the Planning Department will schedule the hearing to occur simultaneously with any hearing MDEQ will have on the proposal.

- g. If an applicant obtains a CUP under this Regulation prior to obtaining MDEQ approval and this approval conflicts in any way with the MDEQ's Opencut Mining Program permit approval, the applicant may be required to amend the CUP application in order to comply with the MDEQ Opencut Mining Permit. Notwithstanding the above, if the conditions of approval under this Regulation conflict in any way with the

Does this constitute
A new hearing
And the whole process
OVER? must change

Do we need to
Amend the CUP
through the
Commission again

MDEQ's Opencut Mining Program permit approval, the more stringent condition shall apply.

If an applicant obtains approval under this Regulation prior to obtaining approval from MDEQ, a condition of approval shall be that Gallatin County reserves the right to require additional conditions of approval addressing mitigation for impacts identified by MDEQ in the Final Environmental Assessment.

6.7 Authorized Use. For purposes of this Regulation, a conditional use permittee for Operations shall engage in the conditionally permitted use on the site until all conditions of approval have been satisfied.

6.8 Revocation or Modification of Conditional Use Permits. A CUP may be revoked or modified by the County Commission under the following circumstances. Modification or revocation may occur only after publishing notice and providing the public and the applicant an opportunity to be heard.

- a. If conditions related to the original approval of the CUP have changed substantially from those at the time the permit was granted;
- b. The County Commission determines the information provide by the Applicant and upon which approval of the CUP was granted was either inaccurate or incomplete;
- c. Revocation or modification is necessary to protect the health, safety, and welfare of the area in which the subject property is situated or the residents of the County;
- d. A conditional use permittee has not materially changed his position by detrimentally relying on the CUP; or
- e. If the person holding the permit has not complied with the conditions upon which it was issued.

6.9 Recording. Evidence of a Conditional Use Permit showing all conditions shall be recorded, at the permittee's expense, in the Office of the Gallatin County Clerk and Recorder at the time of issuance of a Land Use Permit.

Section 7. Complaints, Enforcement and Appeals

7.1 **Complaints.** Any person may file a signed, written complaint with the ZEA regarding an alleged violation of this Regulation. The complaint shall fully

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Does the ZEA know anything about gravel pits?

describe the facts supporting the alleged violation. Upon receipt of a signed written complaint, or upon its own initiative, the ZEA shall investigate the complaint and notify the operator a complaint warranting investigation has been received. If the ZEA determines that there is a reasonable basis that a violation exists, then the ZEA shall take action to resolve the violation.

7.2 Investigation. When investigating an alleged violation, the ZEA shall review this Regulation, CUP and other applicable documents, permits, information, regulations, rules or laws regarding the complaint. The ZEA may on reasonable notice and with consent of the CUP holder enter the subject premises and investigate the complaint documenting the inspection with an inspection report, field notes, interview(s) and/or photographs as appropriate. If access is denied, the ZEA may conduct an investigation by observations from adjacent lands entered upon with permission, if required, and interview of any persons, including the CUP holder, by telephone, email, correspondence or other lawful means.

7.3 Administrative Remedies. If the ZEA determines that any of the provisions of these Regulations are being violated, including operating conditions approved under the CUP process, the ZEA may pursue enforcement remedies provided by law. The ZEA shall notify an alleged violator in writing of the corrective action necessary to remedy the violation.

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7.3.1 The ZEA may: (1) issue orders to obtain after-the-fact permits; (2) issue cease and desist orders requiring cessation of any building, moving, alteration, use or activity which is in violation the Regulation; (3) require mitigation and/or corrective action, which may include orders to dismantle or remove noncompliant structures to remedy the violation; (4) revoke any CUP or land use permit and/or (5) take any other action authorized by law to insure compliance with, or prevent violation of its provisions.

NO WAY

7.3.2 Persons liable for violation and compliance with any CUP, order, determination, decision, fine, penalty, proceeding and the remedial action shall include without limitation , any and all owners, tenants, leaseholders, builders, contractors, subcontractors, architects, agents, employees or other persons or entities that commits, maintains, participates, assists, causes or contributes to such violation; herein "Persons."

7.3.3 Gallatin County, and/or ZEA shall have the right to proceed or take action jointly or severally against any or all Person(s), and the failure to proceed or take action against any Person or Persons shall not constitute a waiver of any rights or remedies whatsoever against any Person or Persons.

7.4 Civil Fine. The ZEA may assess violators an administrative fine of up to \$500.00 per violation. Each day of violation may be considered a separate offense. When determining the amount and duration of the fine, the ZEA shall consider the nature, circumstances, extent and gravity of the violation, any prior history of such violations, the degree of culpability, and such other matters as justice may require. If the fine is not paid, it shall become a lien upon the property.

7.5 Administrative Inspection. The conditional uses herein involve pervasively regulated business or industries that present significant risks to public safety and the environment, therefore the Planning Department and ZEA shall have the right to conduct reasonable administrative inspections of the subject premises to determine if the premises, operations, facilities, conditional use or uses are in compliance with the CUP. Such administrative inspections shall be on reasonable notice, during ordinary and usual business hours, limited in scope, duration and frequency so as not to interfere with the business, and solely for the purpose of determining compliance.

7.6 Injunction. The county Attorney may bring an action in the name of Gallatin County in the District Court to enforce these Regulations, which may include without limitation injunctive relief.

7.7 Remedies, Cumulative. The remedies provided for herein shall be cumulative and not exclusive. No waiver shall result in the failure to enforce any provision(s).

7.8 Appeals/Board of Adjustment. The Gallatin County Consolidated Board of Adjustment shall act as the Regulation Board of Adjustment (BOA) that shall hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination by the ZEA. All appeals from any order, decision, or determination of the ZEA must be made to the BOA within 30-days that the order, decision or determination is filed and served. The appeal must be submitted to the BOA and the ZEA via certified mail the appeal fee as established by the Planning Department, and stated the basis for the appeal. Upon receipt of the appeal, the BOA shall schedule a public hearing with sufficient time to allow the appellant to publish or cause to be published a notice of public hearing in a newspaper of record and serve via certified mail all adjacent property owners with a notice of the appeal and date of public hearing. The appellant shall produce at or before the public hearing an affidavit of publication and certificate of service showing compliance with these notice requirements as a precondition of any appeal. The BOA shall have authority to reverse or affirm, wholly or in part, or modify the order, decision, or determination of the ZEA.

7.9 Appeals of the Board of Adjustment. Pursuant to §76-2-227-228, MCA, a decision from the BOA may be appealed to the Eighteenth Judicial District

Court within 30-days from the date the decision is filed in the office of the BOA.

Section 8. Invalidation and Severability

If any section, subsection, subdivision, sentence, clause, paragraph, or phrase of this Regulation or any attachments hereto is for any reason held to be unconstitutional or void, such decision shall not effect the validity of the remaining parts of this Regulation to render the same operative and reasonably effective for carrying out the purposes of this Regulation.

Appendix A. Site Assessment

OVERVIEW:

In searching for ways to make the gravel industry and neighboring property owners satisfied, while still achieving the function and purpose of the Task Force a classification system emerged.

OBJECTIVE:

Through site assessment (SA) where a proposed operation would be the degree of conflict with the non-compatible land uses within the distance to the proposed mining operation had to be examined. The classification system allows for the determination of whether the operation would need to go through a more rigorous review process or be brought to compliance with the plan adopted for the area.

The more compatible with adjacent land uses an operation is the less rigorous the review of the application. Adjacent land uses affect the ability of an operator to conduct normal mining practices without incurring complaints. The more compatible the adjacent uses are the more flexibility an operator has to adapt to market demands and desired products. The system has been developed into a method of quantitatively determining time gravel extraction will be located on site and the impacts for future operations in Gallatin County. A mining operation with more compatible uses on the perimeter than another operation will score a higher rank on the SA scale. The factors of the scale are rated by starting with fully compatible with adjacent uses (100 points) to high conflict with adjacent land uses (0 points).

Selecting and Scaling Site Assessment Factors of the Land Evaluation and Site Assessment: A guidebook for Rating Agricultural Lands, Second Edition.

Primary Questions and/or Assumptions:

1. Residential structure—it's not the land that has trouble it's the proximity of people
2. Affected Area
 - a. Adjacent property owners only?
 - b. Property owners within 1000 feet of the permitted area
 - c. Property owners within ½ mile of the permitted area
 - d. Property owners within a mile of the permitted area
3. 11-step scale: 0, 10, 20, 30, 40, 50, 60, 70, 80, 90, 100
4. Lot configuration is important (see diagrams)

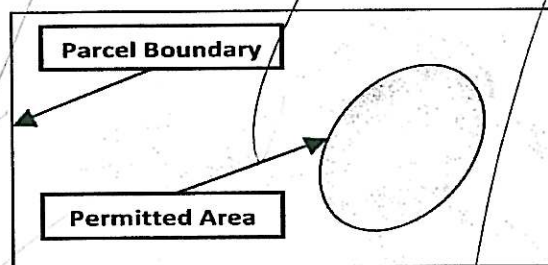


Diagram 1: Permitted Area Definition: Permitted area is defined by MDEQ.

Diagram 2A, 2B & 2C: Number of people (units) in conflict is not necessarily number of lots.

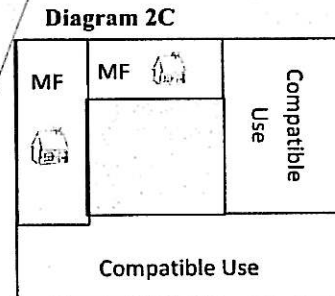
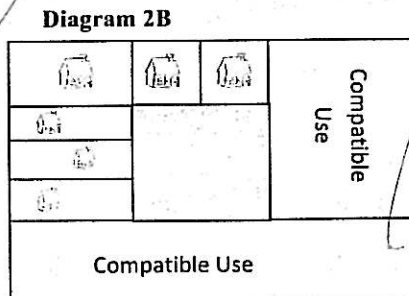
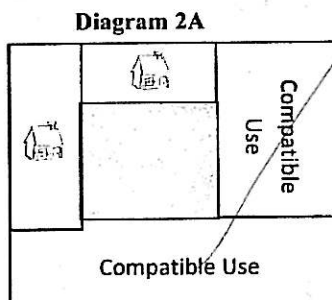


Table 2: Conflict Calculation

	Number of Units	Scale Factor	# Units x Scale
# Units up to 1000 feet from permit area		0.6	
# Units from 1/4 to 1/2 mile from permit area		0.25	
# Units from 1/2 to 1 mile from permit area		0.15	
		Sum	

Table 3: Scale for Perimeter Compatibility

Conflict Value	Scale factor	Suggested Trigger Point
0	100	
Up to 10	90	
11 – 20	80	
21 – 30	70	
31 – 40	60	
41 – 50	50	
51 – 60	40	
61 – 70	30	
71 – 80	20	
81 – 90	10	
91 >	0	

Note: Fractions are rounded up or down

This is ~~the~~ why we All started this process. The GOOD N. P. is GOOD.

APPENDIX B—Good Neighbor Policy

These good neighbor policies were drafted by the Gallatin County Planning Department for operations that mine gravel. It is understood that not all of the conditions will be applicable at every operation and that certain conditions will be developed based on site-specific situations.

1. Prior to operating the sand and gravel mining operation, an approved Weed Management Plan for the site shall be obtained from the Gallatin County Weed Control District. Notwithstanding the above, stockpiled topsoil and overburden berms shall be revegetated in accordance with the plan approved by the County Weed District.
2. Prior to commencing operation, a Traffic Impact Analysis may be required pursuant to Gallatin County requirements to determine the nature and extend of impacts of the operation on all federal, state or local transportation facilities. If warranted, operators may be required prior to commencement of operations to improve roads any other transportation infrastructure to mitigate impacts caused by the operation. Therefore, after issuance of a permit under the Opencut Mining Act and prior to commencing operations and issuance of any required encroachment permit onto any federal, state or county road, the Operators must enter into an agreement with Gallatin County and/or the Montana Department of Transportation that details the nature and extent of road and transportation improvements the operator will complete the timing of those improvements. Operators must complete all required improvements within six (6) months of commencing operations.
3. Where applicable, the operator shall restrict the hours of operation to 7:00a.m.-7:00p.m. Monday thru Friday. When exceptions to these hours are necessary to provide materials for extraordinary circumstances such as large or time-sensitive projects, the operator may notify and request the consent of both the Montana Department of Environmental Quality and the County Commission.
4. Trucks should avoid traveling through any school zones during the hours of 7:45 a.m.-9:00 a.m., and 3:00 p.m.-4:00 p.m., unless other routes are not available.
5. The use of jake brakes on hauling trucks is discouraged and should be avoided. If jake brakes are necessary in certain circumstances for public safety, they must be properly muffled in accordance with industry standards.

6. Any light used for the operation shall be directed in such a way as to be contained within the boundaries of the property and shall be hooded, screened or directed in a manner that minimizes impacts to the adjoining property owners or the neighborhood. Lights shall be extinguished at the close of business each day, with the exception of limited security lighting.
7. Gravel storage piles shall generally not exceed 30 feet in height, as visible above adjacent ground level.
8. No overnight residential use, camping or evidence thereof, shall take place on the site.
9. The operator shall enforce safety measures, including preventing overfilled trucks, covering loads when required by law, education of truck drivers, and monitoring driver performance.
10. Dust abatement shall be performed consistently and conscientiously to limit any impacts to the surrounding properties and general air quality. Dust control will be monitored by onsite personnel during all hours of operation, and will be accomplished by the use of a combination of traps, water and spray bards. Fugitive dust from stockpiles and the site itself will be controlled through the use of sprinklers, water trucks and/or a combination of water and tactifier as needed.
11. The operator shall ensure a visual barrier made of natural material reasonably screens adjacent property owners from activities in the gravel pit.
12. Fuel containment measures shall be utilized as required by the application to MDEQ.
13. Drainage plans for the gravel pit operations shall be submitted to MDEQ for approval prior to conducting operations.
14. Any federal, state or locally adopted Best Management Practices relating to roads and construction sites shall be strictly adhered to.
15. Where appropriate, when mining will occur on the water table, operators will complete a thorough hydrologic study of the site and immediate surrounding area. Upon completion of the study the operator, in conjunction with the DEQ Opencut Division, shall place monitor wells as required around the perimeter of the site. These wells will be monitored and depths measured periodically and recorded on a data base that will be shared with DEQ. Well will also be sampled before mining begins, and every six months, or as

required by DEQ. When possible, these wells and the data base will be in place at least six months prior to any mining activity. All data collected within the jurisdiction of the Gallatin County Local Water Quality District shall be provided to the District.

16. The applicant shall obtain a letter from the local fire district or fire service area having jurisdiction stating all access, parking, fire suppression, and emergency evacuation plans are acceptable.
17. Blasting operations may only occur upon 24 hour written notice to all landowners within 2500 feet of the site.
18. Sound-dampening measures shall be implemented on appropriate equipment on site to minimize noise impacts.
19. Signage, approved by the Gallatin County Road and Bridge Department and/or the Montana Department of Transportation, shall be erected to alert vehicular and pedestrian traffic to the presence of heavy truck travel along all main travel route within X miles of the site.
20. All parking areas for employee vehicles and company vehicles shall be provided onsite.
21. The applicant shall store hazardous materials such as motor vehicle fuels in a manner mandated by MSHA and the DEQ.
22. If a hearing on an application is required pursuant to Montana law, MDEQ shall conduct the hearing in Gallatin County.
23. Gallatin County shall agree to impose and enforce these "Good Neighbor" policies on any County-owned/operated open cut mines within the proposed zoning areas.